



JACKSON POLICE DEPARTMENT

POLICY ON NON-SUFFICIENT FUNDS, ACCOUNT CLOSED AND NO ACCOUNT CHECKS

Checks are an important and often-used medium of payment in our society today. Most often, checks not honored by the bank upon presentment are because of insufficient funds, no account, closed account, payment stopped, or some other similar reason. The problem of non-payment usually lies with the issuer of the check and not with the bank denying payment.

The Jackson Police Department recognizes the importance of the problem of unpaid checks, and we want to do everything reasonably within our power, using the resources entrusted to us, to help the citizens of Jackson address this problem.

In order to understand the type of assistance that can be rendered, a basic understanding of the different types of law is necessary. The law can be divided into two broad categories: Civil and Criminal. Civil law provides a remedy between private citizens, usually in the form of monetary damages, for a person who has been wronged. In order to enforce civil law, the person who has been wronged must file suit against the wrongdoer. While a person can file suit without the assistance of an attorney, it is usually prudent to consult with an attorney prior to filing a suit.

Criminal law exists to allow the state of Wyoming, through its criminal prosecuting attorneys, to hold violators of state statutes and town ordinances accountable. The sanction is usually punishment in some form, such as, a fine, imprisonment, probation, etc. The responsibility of bringing charges on behalf of the State of Wyoming to enforce the criminal statutes is delegated to the Town or County Attorney. The goal of a criminal law action is to punish the wrongdoer. In many situations, a single act can result in both civil and criminal liability.

When a check is returned unpaid, the holder of the check almost always has a civil law remedy against the person who issued the check under at least two legal theories:

- First, when someone signs a check and issues it, that person makes a contract with the recipient that the check will be paid. When the bank does not pay the check, the person who signed it can then be sued for violating this written contract. Under this theory, the holder of the check is entitled to recover the amount of the check, plus interest and costs, but not attorney's fees.

- Second, Wyoming State Statute 1-1-115 provides an extraordinary remedy to collect an unpaid check. This statute provides for giving notice to the person who signed the check telling him that the check was not paid. Following this notice, the person who signed the check has thirty (30) days to pay the check and a collection fee of not more than \$30.00. If the check is not paid within thirty days, the holder of the check has the ability to sue for three times the amount of the check, plus interest and cost of collection, including reasonable attorney's fees. Additional procedural steps are required before initiating this action. This provision in the law is very favorable to the holder of the check.

These two remedies can be used for almost every unpaid check. The criminal law provides a remedy for some, but not all, unpaid checks. Since the purpose for the criminal law is to punish the wrongdoer for the action that he has committed against society, instead of

recovering damages for the holder of the check, additional requirements imposed by Wyoming law must be met before the County Attorney can file charges.

The most stringent additional requirement is that the person who issued the check must have, at the time the check was issued, intended to defraud or deceive. If this requirement cannot be shown, the County Attorney cannot bring criminal action against the issuer of the check. It is this requirement that requires the Police Department and the County Attorney to carefully screen the checks presented to them for prosecution and only accept those that meet all the requirements within the statutes for criminal prosecution. The following types of unpaid checks will normally **not** be accepted for prosecution:

1. Checks issued more than sixty (60) days before the time they are turned over to law enforcement.
2. Post-dated checks or checks which the payee agreed to hold before depositing.
3. Checks that have been turned over to a collection agency, unless the collection agency refers the checks to law enforcement within fourteen (14) days of receipt.
4. Checks on which full or partial payment has been accepted.
5. Two-party checks.
6. Check(s) turned over to law enforcement, from the payee (and others), that total less than \$100.00 within a 60-day period.

Exemptions to the above list will be made when the Police Department or County Attorney are convinced that doing so will be of sufficient value to overcome the obstacles such cases inherently possess.

Consequently, if you have accepted a check and the bank returns it, you must make a decision as to which remedy you will seek. If you believe that the person passing the check did intend to defraud or deceive you at the time the check was passed and your emphasis is in seeing that person punished, then you should contact the appropriate law enforcement agency about pursuing criminal prosecution. However, if you pursue criminal sanctions, the final adjudication may not include recovery of the amount of the check.

You must also understand that once the criminal action is filed, it will not be dismissed just because the person who passed the check desires to make restitution. If you opt for criminal sanctions you must agree not to accept payment for the check or to set up a payment plan unless the County Attorney's office consents. Once the person who passed the check is convicted or pleads guilty, the court may order restitution as part of that person's sentence or probation, but this is not guaranteed. In such cases, the normal method of payment is for the defendant to make regular payments until the amount of the check is paid in full.

If you do not believe that the person who passed the check intended to defraud or deceive you at the time the check was passed or if your main goal is to recover the amount of the check, you should consider pursuing your civil remedies. You can do this yourself, through small claims court, through an attorney, or through a collection agency. An attorney can give you the best advice since he/she will be familiar with the precise facts of your situation. If you choose to file a claim in Small Claims Court, you may take this action either with or without an attorney. Information about filing through Small Claims Court can be obtained at Teton County Circuit Court.

The risk of accepting checks can be greatly reduced if some basic procedures are utilized.

1. Obtain proper identification from the person writing the check.
2. Look at the person's driver's license and compare the photograph on it with the person passing the check.
3. Note on the check if the appearance of the person passing the check matches the photograph on that person's driver's license.
4. Demand and record on the check, the address (physical and mailing), phone number, driver's license number, social security number and place of employment of the person.
5. Employees who accept checks should place their initials on the checks.
6. Be especially wary of people attempting to cash two-party checks. Report this immediately to the bank. Banks have the means of verifying accounts and their balances.
7. Be especially careful of payroll and government checks presented by people you do not know and from businesses or employees you do not know. Refer these to the bank. Banks have the means of verifying accounts and their balances.
8. Larger stores that cash many checks should consider a courtesy card system that can be used for cashing checks.
9. Systems for identifying frequently abused checking accounts may be available through local collection agencies.

These are just a few suggestions that you can incorporate into your check cashing procedure to help minimize losses from unpaid checks. Minimizing check fraud and acceptance of insufficient-funds checks will increase profits, save time, minimize inconvenience, and allow the police department to spend more time on other community needs.

We hope that this check policy will help you understand your remedies and the responsibilities of the Jackson Police Department. If we can help you further, please feel free to contact us.



Todd Smith
Chief of Police

NON-SUFFICIENT FUNDS/ACCOUNT CLOSED CHECKS
INSTRUCTIONS

(Please follow carefully.)

1. The entire report enclosed must be completed legibly for each check submitted. Please print or type.
2. The report must be signed by a person in a position of authority: i.e. manager, owner, etc., or the payee named on the check.
3. Unlike suing in civil court, be aware that you or your business may never receive restitution as a result of criminal prosecution. Furthermore, unlike suing in civil court a successful prosecution can result only if it can be shown that the check passer intended to defraud you. If this is not true, you can still pursue your case civilly.
4. A five-day statutory demand notice must be sent to the passer in each check case. This notification should be sent by certified mail, return receipt requested, and you should retain a copy of the notice letter, as well as the return receipt. This is your proof that the issuer of the check received the notice letter. Use one notice for each check. In addition, you should attempt to make personal "face to face" contact with the passer concerning the check and document your efforts. If you are not successful in obtaining a return receipt, the Police Department will attempt to assist in your efforts.
5. Submit with this report:
 - a) A copy of the check, front and back. Make arrangements to present the original when requested.
 - b) A copy of the five-day notice you sent.
 - c) The Post Office return receipt showing its delivery, or a Police report showing service of the notice.

Do not submit a report and this check for possible prosecution unless you are satisfied that the passer intended to defraud you and you are willing to participate in prosecution even if the passer attempted to pay for the check at a future date.

6. Checks are accepted for prosecution only and are not returned if civil proceedings are initiated.
7. Certain types of checks will normally not be accepted for prosecution. These include:
 - a) Checks dated more than 60 days prior to the date this report is submitted to law enforcement. (Complete Part III only.)
 - b) Post-dated checks or checks which you agree to hold before depositing.
 - c) Checks that have been turned over to a collection agency, unless the collection agency refers the check to law enforcement within fourteen (14) days of receipts.
 - d) Checks that you have accepted full or partial payment on.
 - e) Two-party checks.
8. For checks received in the Town of Jackson, please return the report and required documents to: Jackson Police Department, Attention: Administration 150 E Pearl Avenue Jackson, WY 83001

COPY AS NEEDED

Date Received _____ Case #: _____

NSF: _____ Account Closed: _____ Other: _____

Name(s) on the account: _____

Law Enforcement Use Only – Make No Marks Above This Line

REPORT

PART I

To be completed by person making this report.

The following report should be completed for each check submitted to the Jackson Police Department. Please make a reasonable effort to fully complete the form. If the answer to a question is not known, write "unknown".

1. Business name: _____
Business address: _____
Business phone: _____
2. Person making report: _____
Home address: _____
Home phone: _____
3. Full name and address of business, branch of place where check was accepted:

4. Check' number: _____ Date check was accepted: _____ Amount: _____
5. Name of person who presented the check: _____
6. Please detail what steps you or your employees have taken to contact the passer and/or recover your loss:
Was the passer contacted? _____
By whom? _____
How? _____
When? _____
Where? _____
7. Has the passer attempted to make restitution? If so, please detail the circumstances.

8. Have you successfully served a five-day statutory demand notice on the passer? Yes No
If so, how? _____
Certified Mail Sheriff's Service Personal Service Other: _____
If not served, why? _____
9. Do you feel you have exhausted your ability to collect this check? Yes No
10. Do you feel that the passer of the check intended to defraud you when he/she passed the check(s)? Yes No

11. Have you retained an attorney or turned this matter over to a collection agency in an attempt to collect this check? Yes No

If so, whom? _____

12. Please note any information you feel would help in locating and prosecuting this person:

The decision whether or not to prosecute this individual will be made by a representative of the Teton County Attorney's Office who will take into account numerous factors including:

- What evidence exists showing intent to defraud
- The availability of necessary bank records, etc.

Criminal prosecution does not guarantee restitution since prosecution is designed to punish the criminal offender, not to collect debts. If you agree to prosecute this individual, you cannot drop the charge if he/she offers to pay off the check. If a violation of criminal law cannot be proven, the check will be returned to you upon request.

I hereby understand and agree that all information contained in this report may be used by and disseminated among all Law Enforcement Agencies, the Office of the County Attorney and the Courts. I also understand and agree that this check is being submitted for criminal prosecution and that if criminal prosecution is initiated, it may be necessary for those persons having knowledge of the facts to appear and testify in court.

I hereby certify that no one has accepted full or partial restitution for this particular check as of this date and I further agree not to accept restitution without obtaining the consent of the County Attorney's Office.

I hereby certify that I have read and understand the instruction for this report and that all the facts contained herein are to the best of my knowledge, true accurate and complete.

Signature of person making report: _____

Date: _____

Part II

To be completed by the person who actually took the check

1. Name: _____
2. Address: _____

About the passer:

1. Description: Race: _____ Sex: _____ Age: _____ Ht: _____ Wt: _____
Hair Color: _____ Hair length: _____
2. Name given: _____
3. Address given: _____
4. Phone number given: _____
5. Claimed employment at: _____
6. Driver's license number: _____ State: _____
7. Did photo on driver's license match the passer: Yes No
8. Other ID and number: _____
9. Description of vehicle involved (if any): Make: _____ Model: _____
Color: _____ License plate number: _____ State: _____
10. Names (if known) and descriptions of any persons who accompanied the passer: _____

11. Names and phone numbers of other persons who witnessed the transaction:

Phone: _____

Phone: _____

12. Do you recall the transaction? Yes No

13. Was the passer known to you? _____ If yes, how? _____

14. As the person who accepted the check, can you identify the passer? Yes No

If yes, how? _____

15. What did the passer receive in exchange for the check? _____

Cash (amount): _____ Services (value): _____ Credit (value): _____

Merchandise (description & value): _____

Other (explain): _____

16. Was the check post dated?

➤ Did the passer ask you to hold the check to a future date? Yes No

➤ Did the passer ask you not to deposit the check until a future date? Yes No

➤ Did the passer indicate there might not have been enough money in the bank to cover the amount of the check?

Yes No

➤ If yes to any of the above, what did the passer say? _____

17. Did you see the passer write out the entire check and endorse it? _____

18. Was the check either entirely or partially pre-written? Yes No

If yes, what part was pre-written and what part did you see the passer write? _____

19. Did you initial, mark upon, or write upon the check at the time you accepted it? Yes No

If yes, what? _____

I hereby certify that all of the facts contained herein are to the best of my knowledge, true, accurate and complete.

Signature of person who accepted check

Date

Part III

To be completed by the person making the report

This portion of the report should only be completed for each check received which has been dated MORE THAN 60 DAYS prior to the date this report is submitted to law enforcement. Part I and II need not be submitted for checks over 60 days old unless requested by law enforcement agency or County Attorney's Office.

The information provided in this part will be used for police and court purposes, i.e. sentencing, screening, Department of Probation & Parole, etc. The information may not result in prosecution.

1. Business name: _____

Business address: _____

Business phone: _____

2. Person making report: _____

Home Address: _____

Home Phone: _____

3. Full name and address of business, branch or place where check was accepted:

4. Name(s), address, phone, etc. for the account as imprinted or written on the check:

5. Name of the bank: _____ Account #: _____

6. Check number: _____ Check dated: _____ Amount: _____

7. Date check was accepted: _____

8. Name of person who presented the check: _____

9. Name endorsed on the signature line: _____

DO NOT SUBMIT CHECK IF COMPLETING PART III ONLY

(copy as needed)

FIVE-DAY STATUTORY DEMAND NOTICE

To: _____

Date: _____

This letter is to advise you and give you notice of a nonpayment and dishonor of a check written by you. Said check is described more fully below. This check was returned by your bank to the payee with " _____ " stamped or noted on the face of the check.

* * * * *

Check number: _____ Date: _____ Amount: \$ _____

Pay to: _____ Signed: _____

Bank: _____

You are further notified that Wyoming Statute Section 6-3-703 provides:

A) Any of the following is Prima Facie evidence that the person at the time he/she issued the check or other order for payment of money intended that it should not be paid:

- (i) Proof that at the time of issuance he/she did not have an account with the drawee;
- (ii) Proof that at the time of issuance he/she did not have sufficient funds with the drawee and that he/she failed to pay the check or other within five (5) days after receiving notice of nonpayment or dishonor, personally given or sent to the address shown on the check or other order; or
- (iii) Proof that when presentment was made in a reasonable time the issuer did not have sufficient funds with the draw and he/she failed to pay the check or other order within five (5) days after receiving notice of nonpayment or dishonor, personally given or sent to the address shown on the check or other order.

B) Proof that the drawer opened an account with the draw on a certain date shall be considered evidence of the drawer's knowledge of the account balance on that date.

You are also notified that if you do not pay the above-described check within five (5) days of receiving this notice, excluding the date of receipt, this matter will be referred to the Teton County Attorney's Office for prosecution. Restitution must be made to the person or organization listed below.

Sincerely,

Name: _____

Address: _____

Phone: _____